

invention must be shown in as complete detail as is contained in the claim." 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1987). O'Malley does not meet this required standard.

O'Malley discloses a livestock feeder/storage bin capable of handling liquid and non-liquid feed. See O'Malley col. 1, lines 1-4. O'Malley does not disclose a feed hopper having a filling end and a feeding end, wherein the filling end has a cover having an access door with a hinged lid for opening and closing off the opening of the access door, the hinged lid having at least one recess to enable the hinged lid to be breathable, as is recited in Applicant's amended claim 1. Although O'Malley discloses closure caps, these caps are not lids and are not breathable. The closure caps have handles and are fitted with a dependent skirt "so as to have a neat, tightly fitting closure for the feeder." See O'Malley col. 2, lines 35-37; col. 3, lines 14-19. Applicant submits that the O'Malley reference in fact *teaches away* from a breathable lid by indicating the desirability of a tight fitting lid. Because the reference does not disclose all the elements of Applicant's claims, the reference is improper. As such, Applicant requests that the rejection be withdrawn.

Rejections under 35 U.S.C. § 103(a)

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination, and the reasonable

expectation of success, must both be found in the prior art, not in Applicant's disclosure. See MPEP §2143. See also *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1348 (Fed. Cir. 1991). Applicants respectfully submit that the Examiner has not met any of the basic criteria for establishing a *prima facie* case of obviousness.

Claims 3-4 and 16-17 were rejected under 35 U.S.C. 103(a) as being unpatentable over O'Malley in view of Smeester (U.S. Patent No. 5,740,757). Claims 5 and 18 were rejected based on O'Malley in view of Smeester and further in view of Juculano (U.S. Des. Patent No. 194,594). Claims 6 and 19 were rejected over O'Malley in view of Hill et al. (U.S. Patent No. 6,073,587) ("Hill"). Claim 9 was rejected over O'Malley in view of the Materials Engineering Group Reference ("Materials Engineering"). Claims 10-11 were rejected over O'Malley in view of Materials Engineering and further in view of Smeester. Claim 12 was rejected over O'Malley in view of Materials Engineering and further in view of Smeester and Juculano. Claim 13 was rejected over O'Malley in view of Materials Engineering and further in view of Smeester and Hill. Applicant respectfully traverses the § 103(a) rejections.

Claims 3-4, 16-17

The Examiner seeks to combine O'Malley with Smeester to arrive at Applicant's claims reciting (claim 3) the animal feeder of claim 1, wherein the feeding end of the feed hopper has a protective cage; and (claim 4), the animal feeder of claim 1, further comprising a ladder for accessing the filling end of the hopper. Applicant submits that the suggested combination is improper.

Smeester teaches a complex feeder for bison employing a feed storage unit having a feed compartment. See *Smeester* abstract. The unit employs a computer that is powered by a generator (See Figures 6 and 7). Current is supplied to interrogators 46 that in turn power the auger drive motors 80 for the medication dispensing auger 66 and the feed dispensing auger 68. See *Smeester* col.4, lines 55-67. Smeester discloses a wire mesh fence that extends between the uprights to protect the feed chutes and dispensing augers from injury due to curious or combative bison. See *Smeester* col. 7, lines 3-6. Due to the nature of the combative bison, "arms" are extended out from the unit to separate the feeding bison so that only one bison can feed at a time. See *Smeester* col. 8 line 67-col. 9 lines 1-2. Smeester's feeder can include a movable ladder with ropes attached. See *Smeester* col. 6, lines 51-54.

It is immaterial that certain aspects of the cited art may be cobbled together to approximate certain aspects of the present invention. Rather, there must be concrete evidence of the motivation to combine that goes beyond mere speculation by the examiner. The Federal Circuit has recently held that it is not appropriate for the Board to reject claims on the basis of what the Board members have determined to be "basic knowledge" or "common sense" for one of skill in the art, based only on their own experience or understanding of the art. *In re Zurko*, 59 U.S.P.Q.2d 1693 (Fed. Cir. 2001). The Court stated that in order to support an obviousness rejection there must be "some concrete evidence in the record to support [the] findings." *Id.* In addition, the "Board must explain the reasons one of ordinary skill in the art would have been motivated to select the references and to combine them to render the claimed invention obvious." *In re Lee*, 61 U.S.P.Q.2d 1430 (Fed. Cir. 2002). This, the examiner has not

done. The examiner is requested to furnish specific evidence and explanation for the teaching of all of the elements of the present invention, and for the motivation or suggestion to combine the elements thus taught to achieve the subject matter of the present invention, or in the alternative, to withdraw the rejections based on § 103(a).

In addition, with respect to the ladder, one of skill in the art would have no motivation to modify the short feeder of O'Malley suitable for sheep with a ladder because such a feeder would have no need for ladder access. Also, there is no reasonable expectation of success. O'Malley discloses a feeder supported by leg frames that are attached to a skid and pulled like a sled. Smeester's feeder has uprights that are supported on a trailer frame supported on wheels. As such, one of skill in the art would have no motivation or reasonable expectation of success for modifying O'Malley with Smeester to arrive at applicant's claimed invention.

Moreover, the references do not suggest all the claim limitations. For example, neither reference teaches an animal feeder comprising a feed hopper having a filling end and a feeding end, wherein the filling end has a cover having an access door with a hinged lid for opening and closing off the opening of the access door, the hinged lid having at least one recess to enable the hinged lid to be breathable, at least three legs, the proximate ends of the legs permanently attached to the feed hopper, and a skid assembly permanently attached to the distal ends of the legs as is recited in Applicant's present claims.

In addition, neither reference teaches such a feeder wherein the feeder end has a protective cage, or such a feeder containing a ladder for accessing the filling end. As

such, the rejections are improper and Applicant requests the examiner withdraw the rejections.

Claim 5 and 18

The examiner seeks to further combine O'Malley and Smeester with Juculano to make up the void in the O'Malley and Smeester references with respect to a platform for accessing the filling end of the feed hopper. For the reasons set forth above, Applicant submits that the O'Malley-Smeester combination is improper. Further combining these references with a design patent for a ladder containing a paint stand is inappropriate. Simply viewing the design patent does not give one of skill motivation for combining the other two references. Arguably, one of skill in the art would view the design patent and would realize that it could not support a user, as the examiner has asserted.

Claims 6 and 19

The examiner seeks to combine O'Malley with Hill in order to arrive at Applicant's claim limitation that the feeder be constructed from plate steel. Applicant submits that the combination is improper. The Hill reference teaches a modular animal shelter that is composed of a roof and side rail panels. "Thin plate steel" is used in Hill because it is sturdy and easily transportable, see Hill Col. 4, lines 22-32, but not because it is weather resistant as the examiner asserted. One of skill in the art would know that thin plate steel is not weather resistant and hence, the shelter in Hill required a covering as disclosed in Hill figures 3 and 4. There is no motivation or reasonable expectation of success in combining O'Malley with Hill to arrive at Applicant's claims that recite a limitation of a feeder constructed from plate steel.

Claims 9-13

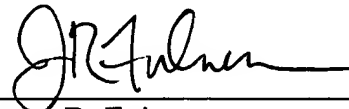
Applicant submits that the rejection has been rendered moot by canceling claims 9-13. As such, Applicant requests that the examiner withdraw the rejections.

CONCLUSION

This Amendment does not increase the number of independent claims, does not increase the total number of claims, and does not present any multiple independent claims and as such, it is believed no fee is due.

Applicant submits that the above amendment and remarks have been made with the goal of promoting the progress of science and useful arts. In light of the above, Applicant respectfully requests that the Examiner withdraw his rejections under 35 U.S.C. § 102(b) and § 103(a), and allow claims 1, 3-8, and 14-22.

Respectfully submitted,



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Versions with Markings to Show Changes Made

1. (amended) An animal feeder comprising:

a feed hopper having a filling end and a feeding end[,], wherein the filling end has a cover having an access door with a hinged lid for opening and closing off the opening of the access door, the hinged lid having at least one recess to enable the hinged lid to be breathable,

at least three [or more] legs, the proximate ends of the [three or more] legs permanently attached to the feed hopper[,], and

a skid assembly permanently attached to the distal ends of the [three or more] legs.

22. (new) An animal feeder comprising:

a feed hopper having a filling end and a feeding end, wherein the filling end has a cover having an access door with a breathable lid for opening and closing off the opening of the access door,

at least three legs, the proximate ends of the legs permanently attached to the feed hopper, and

a skid assembly permanently attached to the distal ends of the legs.